

REMARKS

Claims 77-88 remain pending. Favorable reconsideration is respectfully requested.

The present invention relates to a cosmetic or care product system, comprising:

a skin cosmetic or skin care product; and

a test device packaged within the product system for evaluating the effect of the skin cosmetic or skin care product on the skin over a period of time after the skin cosmetic or skin care product has been applied to the skin, and where the test device has a substrate comprising an adhesive surface,

where the test device does not contain the skin cosmetic or skin care product.

See Claim 77.

Thus, the present invention is directed to a product system that contains (1) the skin cosmetic or skin care product and (2) the test device. Claim 77 explicitly specifies that the (1) and (2) are both packaged within the product system.

The rejection of the claims over Bouyer (FR 2,063,743) is respectfully traversed. The reference fails to disclose the claimed product system.

Bouyer discloses a process for the diagnosis of skin types. In the process described by the reference, an adhesive strip is applied to the skin of a test subject, and then the strip is removed. The removed strip carries away surface elements of the epidermis which remain attached to the strip. Those surface elements are then analyzed to diagnose the subject's skin type. See page 1 of the English translation of record. Once the subject's skin type has been identified, beauty products may be prescribed. See page 2 of the English translation of record.

Thus, Bouyer certainly discloses a test device-- i.e., the adhesive strip. What the reference fails to disclose or suggest is packaging the adhesive strip with a skin cosmetic or skin care product as claimed. Rather, the purpose of the method described by Bouyer is to

analyze the skin and then prescribe beauty products. It does not make sense to package the adhesive strips together with a beauty product in the process described by Bouyer. Since the purpose of the test strip is to determine what beauty product to prescribe, how would one know which beauty product to package with the adhesive strip before the strip was even used to analyze the subject's skin?

It is the Examiner's position that the last paragraph of Bouyer describes the claimed product system. That paragraph reads as follows:

The process and the devices which are the subject of the invention may be used in all cases in which it may be useful to determine the skin type and, in particular, for the prescription, sale or advertising of beauty products. They may be especially useful in the case of sale of these products by mail. [Emphasis added.]

Referring to the portion of the reference quoted above, the Examiner asserts:

...one might reasonably infer that beauty products are not necessarily part of the system in Bouyer, the same passage, based on the permissive language of "may" does allow for beauty products to be part of the system, thus bringing the instant invention within the purview of that previously disclosed.

The last paragraph contains two instances of the word "may." In the first instance, Bouyer is simply stating that the adhesive strip can be used determine the skin type of the subject (i.e., dry, oily or combination skin) so that beauty products can be prescribed, sold or advertised. The second instance simply states that the adhesive strip will useful in the sale of beauty products by mail. There is simply no basis to conclude that the last paragraph of Bouyer describes an adhesive strip and a beauty product packaged together.

In fact, the last sentence makes it quite clear that the adhesive strip and the beauty product are separate. The adhesive used to diagnose skin type and then recommend beauty products for subsequent purchase. In fact, the beauty products are sold to the subject by mail. Clearly, if the beauty product is sold by mail, then it is not packaged with the adhesive strip.

In view of the foregoing, Bouyer fails to disclose a product system that contains (1) the skin cosmetic or skin care product and (2) a test device, where (1) and (2) are packaged together. Accordingly, the claimed subject matter is not anticipated by this reference. Withdrawal of this ground of rejection is respectfully requested.

The rejection of the claims under 35 U.S.C. §102(e) over Slavtcheff et al. '235 is respectfully traversed. Slavtcheff et al. '235 is not available as prior art against the claims of the present application.

The present application claims benefit to international application serial No. PCT/FR02/00730 filed on February 28, 2002. The international application claims priority, in turn, to French application No. 01 02888 (hereinafter referred to as "the French priority application"), filed on March 2, 2001. A copy of a certified English translation of the French priority application and the drawings from that application are submitted herewith.

Page 4 of the French priority application describes a process for determining the efficacy of a cosmetic or care product, in particular an anti-wrinkle product, by:

- a) applying a substrate provided with an adhesive surface onto a test zone of the skin,
- b) removing the substrate,
- c) applying on the test zone a product having an action on the wrinkles,
- d) applying a new substrate provided with an adhesive surface onto the test zone and removing the substrate,
- e) comparing the images formed on the substrate before and after application of the product.

See the middle of page 4 of the French priority application.

A product system for implementing that process is shown in Figure 9 of the French priority application. Figure 9 depicts a “kit containing an anti-wrinkle product, a plurality of adhesive substrates and a package on which is printed an atlas. See the English translation at page 5, middle. See also the description of Figure 9 at page 8 of the French priority application:

One or more substrates can be sold with an anti-wrinkle product 5 and its package 6 in the form of a kit.

In this case, package 6 advantageously contains a set for reference images 21 forming a self-evaluation atlas, as well as dark zone 23 to facilitate observation of the image formed on adhesive substrate 1.

Of course, the invention is not limited to the examples given in the foregoing.

Accordingly, the test device does not contain the test device does not contain the skin cosmetic or skin care product.

In view of the foregoing, the claimed product is described in the French provisional application.

Slavtcheff et al. ‘235 published on December 5, 2002. The application which issued as the Slavtcheff et al. ‘235 publication was filed on October 21, 2001 and claims priority to a provisional application filed on May 30, 2001.

Since (1) the March 2, 2001 filing date of the French priority application is prior to the May 30, 2001 filing date of the Slavtcheff et al. provisional application and (2) the claims of the present application are supported by the French priority application, Slavtcheff et al. ‘235 is not available as prior art against the present application. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Application No. 10/622,486
Reply to Office Action of February 6, 2009

Applicants submit that the present application is in condition for allowance. Early notice to this effect is earnestly solicited.

Customer Number

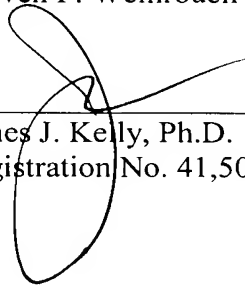
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